

**Agenda Item No:** 9  
**Report To:** Cabinet  
**Date of Meeting:** 13<sup>th</sup> July 2017  
**Report Title:** Independent Living Scheme, Repton Park, Ashford  
**Report Author & Job Title:** Sharon Williams  
Head of Housing  
**Portfolio Holder** Cllr. Gerald White  
**Portfolio Holder for:** Housing



**Summary:** The report sets out proposals to work in partnership with Cheyne Capital (an investment management company), using their Social Impact Fund, to deliver an Independent living scheme for older people at Repton Park, Ashford.

This scheme is believed to be the first of its kind in Kent utilising institutional investment funds to unlock the delivery of this scheme.

**Key Decision:** NO

**Significantly Affected Wards:** Repton

**Recommendations:** **The Cabinet is recommended to:-**

- I. Agree that the Council enters into a 40 year lease and sub-lease with Cheyne Capital (or its group companies) to support the delivery of an Independent living scheme for older people at Repton Park, subject to any planning approvals that may be required to enable the proposed scheme to progress.**
- II. Give authority to the Head of Housing, Head of Finance and the Director of Law & Governance in consultation with the Portfolio Holder for Housing, to execute and complete all necessary documentation to give effect to the above recommendation.**

**Policy Overview:** Housing Strategy Framework Priority 1- Improve the supply of affordable housing to meet local housing needs in urban and rural.

**Financial Implications:** The Council is not required to provide capital funding to support the delivery of this scheme as this will be funded by Cheyne Capital using their Social Impact Fund.

However, under the terms of the lease the Council are committed to paying a pre-determined rent to Cheyne Capital (or its group company who will be the landlord) for the 40 year term after deducting its pre-agreed management costs. The lease will be a full repairing and insuring lease and the Council will bear all of the risk for repairs and lost revenue through voids or bad debt.

Officers have put together a comprehensive breakdown of the potential management costs for a scheme of this nature to ensure that the risks to the Council are managed. A full breakdown of the management costs is provided at Exempt Appendix 1. The model includes a contingency fee of 10%.

<b>Legal Implications</b>	The legal implications are set out in the body of the report.
<b>Equalities Impact Assessment</b>	See Attached at Appendix 2
<b>Other Material Implications:</b>	
<b>Exempt from Publication:</b>	<b>Exempt appendix 1</b> <b>Not For Publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 and the public interest in maintaining the exemption outweighs the public interest in disclosing the information</b>
<b>Background Papers:</b>	<b>N/A</b>
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## **Report Title: Independent Living Scheme, Repton Park, Ashford**

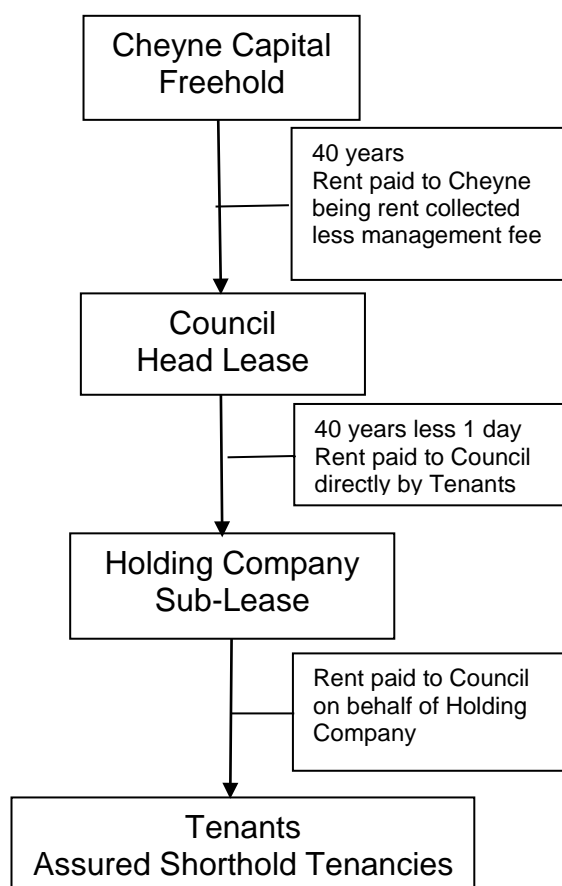
### **Introduction and Background**

1. The Council has been trying to encourage the delivery of an older persons independent living scheme on the Taylor Wimpey site at Repton Park, which is required as part of the section 106 agreement, for some time.
2. Despite strong encouragement to our registered housing provider partners over a period of approximately three years no one has come forward to deliver the scheme. Although some parties have shown an interest they have withdrawn due to the perceived risks in developing and managing a supported housing scheme of this nature. The situation has been exacerbated by the mandatory 1% rent reduction.
3. The Housing Revenue Account (HRA) cannot deliver the scheme due to its current debt cap restrictions.
4. In view of this, officers have identified an alternative delivery mechanism working in partnership with Cheyne Capital (an investment management company), utilising institutional investment, which would deliver the scheme at Repton Park without any capital or revenue being invested by the Council.

### **Proposal/Current Position**

5. Cheyne Capital is an investment management company, which manages a number of investment funds for the purposes of obtaining a return for their investors. The company have a Social Impact Investment Fund with which they work with local authorities, registered providers and developers to deliver affordable housing.
6. Under the proposed model Cheyne Capital will enter into a contract with the developer, Taylor Wimpey, for them to construct the building and then transfer the freehold of the site to Cheyne Capital, or its subsidiary company. The scheme will be constructed in accordance with the appropriate planning permissions, the requirements of the section 106 agreement for the site and any variations that the planning authority deems necessary.
7. The Council will enter into a lease with Cheyne Capital (or its subsidiary company) for a term of 40 years from practical completion of the property. At the end of the term, the Council will have an option to acquire the ownership of the freehold interest in the property for £1.00. The lease will be a full repairing lease and the full risk of repairs and voids and bad debt would sit with the Council. The terms of the lease provide that the Council will pay to Cheyne a fixed rent sum for the 40 year term which increases each year by CPI +1%.

8. The Council will then grant a sub-lease to another Cheyne Capital holding company, which will then grant the tenancy agreements to the residents. This lease will contain appropriate provisions to give the Council responsibility for the nomination of tenants to the properties and to act as the holding company's agent for the ongoing day to day management of the properties. For the management services, the Council will be entitled to retain a fee from the rent that it will collect from the tenants on behalf of the holding company as its agent.
9. The structure of the transaction is set out in the diagram below.



10. As part of the leasing arrangements set out above the Council will collect the rental income from the tenants on behalf of the holding company and will deduct a management fee from that income to cover its management costs, a provision for lost income through voids, bad debt and repair costs, before paying the rent to Cheyne under the headlease. Officers from housing and finance have produced the spreadsheet contained at exempt Appendix 1. It reflects the provisions included in the proposed leasing model, to cover the Council's costs and manage its risks. It includes a provision for repairs to all of the component parts of the building on a lifecycle replacement programme and a contingency sum of 10% for unforeseen expenditure.
11. In addition, officers have negotiated that a 'goodwill' clause be included within the leases to provide that in the event of a significant change in circumstances the Council or Cheyne can call a meeting to review the arrangements and the

payments. This clause is felt necessary since we are not in a position to foresee changes in benefit levels or future housing policy.

12. Cheyne Capital have also agreed that a break clause can be included in the lease documents enabling the Council to bring the head lease to an end and call for the freehold transfer after 20 years if it wishes to do so. There would be a premium payable to Cheyne Capital for the transfer at this point and details of how this will be calculated will be included in the lease.
13. As the Housing Revenue Account is at the top of its debt cap, the Council has to be more innovative when considering the delivery of affordable housing. Officers are satisfied that the head lease described in the structure above can be held by the Council as an investment. This means that the Council is not holding its leasehold interest for the purposes of providing housing and so the scheme will not affect the Housing Revenue Account debt cap position.
14. As an investment opportunity, this proposal represents a fair return for the Council whilst also delivering an affordable housing scheme that would not otherwise be delivered.
15. The actual return for the Council will be £77,000 per annum, which after costs will give a net return of £7,000 (amount increased annually by CPI) together with the transfer of the freehold interest in the property at the end of the 40 year term.

## Implications and Risk Assessment

16. It should be noted that the full risk sits with the Council under the terms of this lease, however officers from housing and finance have carefully assessed the costs of running a scheme of this nature and have accounted for all identified risks.
17. In addition a contingency sum of 10% of the rental income has been built into the scheme costs to mitigate unforeseen risks. This together with the inclusion of the goodwill clause mentioned above will assist with managing the potential risks of the scheme.
18. The following risk matrix has been prepared to consider the key risks.

<b>Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Mitigation Action</b>
Inflation – the rent payable under the headlease will increase by CPI=1% each year, this may not match the rate of increase of the rent under the tenancies	Low	Medium	10% contingency figure incorporated Goodwill clause Break Clause
Demand for the property – the Council takes the financial risk of any void properties	Low	Low	The design and build will reflect features to attract the client group

			Goodwill clause included
Government Policy – this could affect the rent that could be charged to the tenants, or the Council's ability to hold the property as an investment	Low	High	10% contingency sum included Goodwill clause Break Clause
Higher than anticipated rent arrears	Low	Medium	Low risk client group 10%contingency Goodwill Clause Break Clause
Repairs costs higher than anticipated.	Low	Low	10% contingency Goodwill clause Break Clause Projections of cost based on actual information held in relation to similar stock holdings.
Loss of the building	Low	High	Insurance cover factored into the financial model.

## Equalities Impact Assessment

19. Members are referred to the attached Assessment at Appendix 2. There are no adverse impacts as a result of this proposal.

## Consultation Planned or Undertaken

20. Consultation has taken place with the Portfolio Holder and the Leader as well as representatives of finance and legal.

## Other Options Considered

21. This scheme could not be delivered directly by the Council due to the debt cap restrictions in the Housing Revenue Account.
22. Officers have promoted this site to registered housing providers for some time, however despite some initial interest no organisations have come forward with proposals to develop this scheme over a period of three years.

## Reasons for Supporting Option Recommended

23. If the Council does not take positive action it is likely that this site would remain un-built for several more years

## **Next Steps in Process**

24. Following approval of the scheme from the Cabinet, work will commence on agreeing the terms of the leases and any other appropriate documentation.

## **Conclusion**

25. This proposal provides an alternative new delivery mechanism to bring forward housing, which compliments the existing delivery tools. This is believed to be the first deal of this kind in Kent and if successful could be replicated on other larger sites in the Borough and could be held up as an exemplar scheme for other Councils.
26. It is likely that without this proposal the land at Repton Park would remain undeveloped for several years.

## **Portfolio Holder's Views**

27. This is an exciting proposal and I am confident that although there are risks appropriate measures have been put in place to manage this scheme well.

## **Contact and Email**

28. Sharon Williams
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# Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

## Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:

- (a) Eliminate discrimination, harassment and victimisation;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

## Appendix 2

3. These are known as the three aims of the general equality duty.

### Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership\*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

\*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

### Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.

6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:

- removing or minimising disadvantages suffered by people due to their protected characteristics.
- taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
- encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.



7. How much regard is 'due' will depend on the circumstances. The greater the potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.
  8. In terms of timing:
    - Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
    - Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
    - The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
  - The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
  - It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
  - A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
  - A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

### Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:
  - Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
  - Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

<b>Lead officer:</b>	Sharon Williams
<b>Decision maker:</b>	Cabinet
<b>Decision:</b> <ul style="list-style-type: none"> <li>• Policy, project, service, contract</li> <li>• Review, change, new, stop</li> </ul>	Approval to work in partnership with Cheyne Capital (an investment management company), using their Social Impact Fund, to deliver an Independent living scheme for older people at Repton Park, Ashford.
<b>Date of decision:</b> The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	13 <sup>th</sup> July 2017
<b>Summary of the proposed decision:</b> <ul style="list-style-type: none"> <li>• Aims and objectives</li> <li>• Key actions</li> <li>• Expected outcomes</li> <li>• Who will be affected and how?</li> <li>• How many people will be affected?</li> </ul>	<p>To deliver an Independent Living Scheme for older persons. The aim is to target those older persons looking to downsize from their current accommodation into accommodation more suited to their current needs thus freeing up family accommodation to meet the needs of families seeking accommodation.</p> <p>The scheme will cater for 40 households.</p>
<b>Information and research:</b> <ul style="list-style-type: none"> <li>• Outline the information and research that has informed the decision.</li> <li>• Include sources and key findings.</li> </ul>	<p>Following the rent reduction policy of the last government and reductions in Homes and Communities Agencies grant funding our Housing Association development partners were unable to deliver a 40 units older persons scheme on viability grounds. Therefore Housing Services sought to find another source of funding to deliver the scheme, the use of institutional investment funds was being promoted by Central Government we therefore in conjunction with our Finance and Legal colleagues sought to find an alternative solution to fund and deliver the scheme.</p>
<b>Consultation:</b> <ul style="list-style-type: none"> <li>• What specific consultation has occurred on this decision?</li> <li>• What were the results of the consultation?</li> <li>• Did the consultation analysis reveal any difference in views across the protected characteristics?</li> <li>• What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?</li> </ul>	<p>Consultation has been carried out within Housing Services and its Planned Maintenance and Housing Management teams to consider the overall life span costs of the scheme over the 40 year period of the lease.</p> <p>Legal and Finance teams have been consulted in terms of the way the lease will function and work in our best interests and to ensure the finances 'stack up' over the course of 40 years respectively.</p> <p>The consultation enable us to consider the terms of the lease and its implications and to ensure we had adequate financial provision for the duration of the lease.</p>

<b>Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.</b> When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.		
Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	High	Positive Major
Middle age	High	Positive Major
Young adult	Medium	Positive Minor
Children	None	Neutral
<u>DISABILITY</u> Physical	High	Positive Major
Mental	None	Neutral
Sensory	None	Neutral
<u>GENDER RE-ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	None	Neutral
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral

<b>Mitigating negative impact:</b> Where any negative impact has been identified, outline the	None identified
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measures taken to mitigate against it.	
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<b>Is the decision relevant to the aims of the equality duty?</b>	
Guidance on the aims can be found in the EHRC's <a href="#">Essential Guide</a> , alongside fuller <a href="#">PSED Technical Guidance</a> .	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	N/A
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	yes
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

<p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>• Consider how due regard has been had to the equality duty, from start to finish.</li> <li>• There should be no unlawful discrimination arising from the decision (see guidance above).</li> <li>• Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.</li> <li>• How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?</li> </ul>	<p>Due regard has been given to all protected groups throughout the project.</p> <p>There is no unlawful discrimination will arise from this decision. All protected groups have been considered ,</p> <p>The effect on the community will be either positive or neutral therefore no further justification need be sought to deliver the scheme as proposed.</p> <p>Recommendation is sought for decision to allow officers to monitor the delivery of the scheme by way of regular review.</p> <p>This will be done by setting up a project group in Housing to deliver the scheme who will work closely with colleagues in Legal and Finance.</p>
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	<i>The council's revised policy register will assist services to meet this</i>
<b>EIA completion date:</b>	27/06/17